IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2002

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 18446 of 1997 and W.M.P. No. 29091 to 29092 of 1997

1. R. Sekar
2. Arumugham
3. Chidambaram
4. Manickavasagam
5. T. Kaliyamurthy ... petitioners

Versus

1. The Regional Transport
Authority, Cuddalore

2. The Tamil Nadu State Transport
Corporation, Villupuram Circle
Villupuram

3. The District Collector
Cuddalore District, Cuddalore

4. S. Kumar ... respondents
Petition under Article 226 of the Constitution of India
praying for a Writ of Certiorarified Mandamus as stated therein.

For petitioners : Mr. R. Subramaniam
+ For respondents : Mr. P. Sanjay Ramaswami, Govt.
Advocate for RR1 and 2
Mr. S. Kamadevan, Govt.Advocate-R3
No appearance for R4

: ORDER

The petitioner's have filed the above writ petition seeking for a Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings No.C.No.A2/3881/97 RTO dated 07-10-1997 on his file and quash the same and consequently direct the respondents 1 to 3 to issue proceedings to direct the bus operators to stop only in the old Puduchatram Bus Stop Villupuram District.

2. Heard Mr. R. Subramaniam, learned counsel appearing for the petitioners, Mr. P. Sanjay Ramaswami, learned Government Advocate appearing for the first and second respondents and Mr. Kamadevan, learned Government

Advocate for the 3rd respondents and there is no representation on behalf of the fourth respondent.

3. The petitioners are residents of Villianur and Puduchatram Village which are situate in Cuddalore-Chidambaram Highway. According to the petitioners, all the Government buses were stopping atPuduchattiram bus stop which is nearby Railway Station,Bazaar and Villages. During November 1996, without any notice, the buses started stopping in the road leading to Parangipettai about 500 yards from the original bus stop mentioned above. On enquiry, the petitioners came to know that the fourth respondent herein has constructed the said bus stop on the lands belonged to Kuppusamy, Ramasamy Chettiar and Dharmaparibalana Sabha, a Private trust. The Canara Bank is situated in the 4th respondent's property which has donated for the construction of new bus stop. According to the petitioners, the 4th respondent is a highly influencial person and is politically powerful who had managed to persuade the 2nd respondent to stop the buses in the said newly erected bus stop as a result the villagers and passengers are put to great loss and hardship. The first petitioner and others filed a suit in O.S. No. 897 of 1994 before the District Munsif Court, Cuddalore against the 2nd respondent herein for a mandatory injunction for stopping the buses in the old bus stop in Puduchatram which was dismissed on 25-10-1996. The 4th respondent herein has filed W.P. No. 9777 of 1996 against the respondents 1 to 3 herein for a writ of mandamus to direct the respondents therein to restore the operation of the buses through the newly constructed bus stand. This Court on 26-07-1996 directed the said respondents to consider the representation made by the 4th respondent in the light of the result of the suit and keeping in mind the convenience of the general public. The first petitioner has filed an appeal in A.S. No. 63 of 1996 against the Judgment and decree dated 25-1 0-1996 before the Sub-court, Cuddalore which was allowed on 05-12-199 6. The 4th respondent again filed another W.P. No. 242 of 1997 for a Writ of Mandamus to direct the authorities to continue the operation of the buses from the newly constructed bus stop suppressing the fact that the appeal in A.S. No. 63 of 1996 was allowed by the Subcourt, Cuddalore. The said Writ Petition No. 242 of 1997 was also dismissed by this Court with an observation that when a representation is pending before the respondents, there is no necessity to issue any directions as sought for. The first respondent in and by his proceedings 07-10-1997 has issued directions to all the transport operators to stop the buses on both the bus stops. Aggrieved by the order of the first respondent, the petitioners have come forward with this writ petition.

4. The learned counsel for the petitioners argued that the 4th respondent had erected the new bus stop for his benefit and also for the benefit of his close relatives as their shops are located near the new bus stop. The respondents 1 and 2 have failed to follow the decree passed by the competent civil court. The procedures contemplated under the Tamil Nadu Motor Vehicles Rules have been ignored by the respondents. The 1st respondent has passed the impugned order as a via-media without any authority. The new bus stop is far away from the villages.

5. The learned counsel for the petitioners Mr. R. Subramaniam

has submitted his written arguments after the matter was reserved for orders and circulated the same along with the xerox copies of the citations. In the said written arguments, it is stated that the new bus stop was not approved as per Rule 245 of Motor Vehicles Act, besides it is violative of Section 117 of the Motor Vehicles Act.

6. The learned Government Advocate Mr. Sanjay Ramaswami appearing for the respondents 1 and 2 argued that prior to the judgment was delivered by the Sub-court in A.S. No. 63 of 1996 the fourth respondent has filed W.P. No. 9777 of 1996 before this Court and this Court direted the respondents to dispose of his representation within four weeks. The respondents 1 and 2 have given instructions to all the operators to stop the buses in the new bus stop and the fourth respondent was directed to approach the concerned local authority for obtaining transfer of bus stand as required under Rule 245 of the Tamil Nadu Motor Vehicles Rules, 1989. Subsequently, the 4th respondent has filed W.P. No. 242 of 1997 before this Court wherein it is alleged that opposite groups are not allowing the buses to stop at the newly constructed bus stop and prayed for a direction to the authorities to take suitable action against them. This Court dismissed the said writ petition on the ground that the petitioner's representation is pending before the District Collector and as such no direction was necessary. Both the parties have conducted Roadroko for ventilating their grievances, they were constrained to issue temporary direction to all the operators concerned to stop the buses on both the bus stops till final decision is taken. The learned counsel admitted that Government Pleader's Opinion was also obtained, who has advised to implement the order of the Sub-court in A.S. No. 63 of 1 996 dated 15-12-1996 as there is no appeal preferred against it. The respondents 1 and 2, based on the representations, orders of the Court and utility of both the bus stops by the public issued the said direction which is impugned in this writ petition. It was also ascertained that the public of Puduchatiram have been using the old bus stop for a long time, the same was ordered as an official bus stop for Puduchatiram in the interest of the public. At the same time, certain sections of people have been using the new bus stop for several years, it was approved only as a request bus stop. Considering the usage of both the bus stops, the respondents 1 and 2 have issued the following orders:-

1. The mofussil buses plying from Cuddalore to Chidambaram should be stopped in front of Police Station First, and then at the requested bus stop for picking and setting down the passengers. On return from Chidambaram to Cuddalore, the buses should be stopped first at the requested bus stop, and then opposite to the Police Station

2. In respect of town buses plying from Cuddalore to Puduchatiram, they have to stop in front of the Police Station first, and after setting down the passengers, they should go up to the requested stop, and there, they should be stopped after setting down the passengers till the departure time comes towards cuddalore. As soon as the departure timings comes, the vehicle should pick up the passengers from the requested bus stop and then come to the stop in front of Police Station, and then proceed to Cuddalore after picking up the passengers waiting at the bus stop.

3. In respect of town buses from Chidambaram to Puduchatiram, they have to come and stop at the requested stop first and after setting down the passengers they should ply upto Puduchatiram Police Station, and after setting down the passengers they should be stopped on the Railway Station road till the departure timings towards Chidambaram. As soon as the departure timings comes towards Chidambaram, they should pick up the passengers waiting at the Police Station bus stop, and then come to the requested bus stop and pick up the passengers if anybody are waiting at the bus stop.

The 4th respondent was also directed to approach the local authority for getting approval of bus stand as per Rule 245 of TNMV Rule 1989.

Mr. Sanjay Ramaswami, learned Government Advocate argued that one group led by the petitioners wanted the old bus stop; whereas another group led by the 4th respondent wanted the new bus stand and both of them have indulged in road-roko pressing their respective demands, which has created law and order problem. In order to satisfy both the groups, the impugned order was passed till a regular bus stop is approved by the authorities. The learned Government Advocate submitted that since this Court is ceased of the matter the respondent could not pass final orders.

7. Mr. Kamadevan, learned Government Advocate appearing for the 3rd respondent reiterated and adopted the contentions of the learned counsel for the respondents 1 and 2.

8. The counsel for the petitioner has relied upon AIR 1999 SC 1902 (Bangalore Medical Trust Vs. S. Muddappa and Others) wherein it was held thus:-

"46. Financial gain by a local authority at the cost of public welfare has never been considered a legitimate purpose even if the objective is laudable. Sadly the law was thrown to winds for a private purpose... ...Speedy or quick action in public institutions call for appreciation but our democratic system shuns exercise of individualised discretion in public matters requiring participatory decision by rules and regulations. No one howsoever high can arrogate himself or assume without any authorisation express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law. When the law requires an authority to act or decide, if it appears to it necessary or if he is of opinion that a particular act should be done, then it is implicit that it should be done objectively, fairly and reasonably....

52. .....What is not permitted by the Act to be done by the Authority cannot be assumed to be done by State Government to render it legal. An illegality cannot be cured only because it was undertaken by the Government. The Section authorises the Government to issue directions to carry out purposes of the Act. That is the legislative mandate should be carried out. And not that the provision of law can be disregarded and ignored because what was done was being done by State Government and not the authority. An illegality or any action contrary to law does not become in accordance with law because it is

done at the behest of the Chief Executive of the State. No one is above law. In a democracy what prevails is law and not the height of the person exercising the power."

The dictum laid down by the Hon'ble Supreme Court in the above case is that conversion of public park into a private nursing home was held as illegal. The apex Court further held that public spirited citizens having faith in the Rule of Law are rendering great social and legal services by espousing cause of public nature and they cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. The factual matrix in the above case is totally different from the case on hand as such the said Judgment will not in any way be useful to the petitioners herein.

The learned counsel for the petitioner relied upon another Judgment reported in (1999) 6 Supreme Court Cases 464 (M.I. Builders Pvt Ltd., Vs. Radhey Shyam Sahu and others) wherein it was held thus:-

"71. ....Judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or malafide.

73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law, Judgtes are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.

81. A number of cases come to this court pointing to unauthorised constructions taking place at many places in the country by builders in connivance with the corporation/municipal officials. In a series of cases, this Court has directed demolition of unauthorised constructions. This does not appear to have any salutary effect in cases of unauthorised construction coming to this Court. While directing demolition of unauthorised construction, the Court should also direct an enquiry as to how the unauthorised construction came about and to bring the offenders to book. It is not enough to direct demolition of unauthorised construction, where there is clear defiance of law. In the present case, but for the observation of the

High Court, we would certainly have directed an enquiry to be made as to how the project was conceived and how the agreement dated 04-11-1993 came to be executed."

It was a case where the popular Palika Bazar in New Delhi was constructed by a private party on the park of historical importance which was located in the conjested commercial cum residential area. Decision of the Municipality and procedures adopted by it for entrusting the project to the builder held contrary to statutory provisions. The Honourable Supreme Court held that the Corporation's action is unreasonable, arbitrary and malafide besides unfair and opposed to public policy. Hence, the Honourable Supreme Court held that judicial review is permissible if the impugned action is against law or violative of prescribed procedure. Hence, this case also will not be helpful to the petitioners.

9. The petitioners have filed the appeal A.S. No. 63 of 1996 before the Sub-court and in the said appeal, the Regional Manager, Thanthai Periyar Transport Corporation and General Manager, Thanthai Periyar Transport Corporation alone respondents. The said Corporation has taken a defence before the Civil Court that under Sec. 84 of the Tamil Nadu Motor Vehicles Act and under Sec. 107 of the District Municipalities Act, the Regional Transport Officer fixing the location for the bus stop, non-joinder of RTO in the suit were fatal to the case.

10. After the decree was pased by the Sub-court, the competent authority namely the Regional Transport Officer has temporarily decided and decleared the new bus stop as a request bus stop. Decree means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the right of the parties with regard to all or any of the matters in controversy in the suit. Any decree passed by the Civil Court where the necessary parties are not arrayed as a party, such a decree can not conclusively determines the matter in controversy in the suit. Further, the petitioners have not disputed the right of the first respondent herein in fixing the location for the bus stop. Admittedly, the first respondent was not a party in the civil proceedings. In the suit, the then Thanthai Periyar Corporation was arrayed as defendant. Even the fourth respondent herein is not arrayed as defendant. The Judgment and Decree passed in A.S. No. 63 of 1996 has not conclusively determined the matter in controversy.

11. Rule 245 of the Tamil Nadu Motor Vehicle Rules contemplates that the local authority shall apply to the Regional Transport Authority for approval of any scheme for construction of public stand for any class of public service vehicle. The application shall be accompanied by a sketch of the proposed site and blue print of the construction proposed to be erected with the approval of the Directorate of Town and Country Planning, Madras and shall contain details such as advantage of having a public stand, the class of vehicles for which stand is proposed, extent of the site proposed, number of

vehicles likely to use such site etc.,

12. Rule 246 of the Act speaks that in the case of stage carriages, the Transport authority shall after consultation with such other authority as it may deem desirable and after hearing the representation of the operators concerned, fix or alter the stage of all bus routes.

13. A joint reading of the Rule 245 and 246 makes it clear that the local authority and the Regional Tranport Authority are competent persons to make provisions for stand for public service vehicles and also fixing or alteration of the sites for the said carriages as such the petitioners have no locustandi to file this writ petition though they are armed with a decree passed by the Sub-court in A.S. No. 63 of 1996. As pointed out by me supra, the said decree will not be of any use to the petitioners.

14. As stated by me supra, the competent authority has passed the impugned order temporarily declaring the bus stop as a request bus stop pending final decision and in order to avoid law and order problem. Hence, I do not find any illegality or infirmity or impropriety in the impugned order. However, I direct the respondents 1 to 3 to take necessary action in

accordance with law and decide as to which bus stop is suitable for the general public and pass final orders within a period of six months from the date of receipt of a copy of this order.

In the result, this writ petition is dismissed. However, considering the circumstance of the case, there shall be no order as to costs. Consequently, connected WMP is closed.

14-02-2002

rsh
Index : Yes | No

A. KULASEKARAN, J

s/d
Asst. Registrar

//True Copy//

s/d
Sub-Asst. Registrar

To

1. The Regional Transport

Authority, Cuddalore

2. The Tamil Nadu State Transport
Corporation, Villupuram Circle
Villupuram

3. The District Collector
Cuddalore District, Cuddalore

Pre-delivery Order in
W.P. No. 18446 of 1997

14-02-2002